

By: Ellis

S.B. No. 1080

A BILL TO BE ENTITLED

AN ACT

relating to pre-trial procedures in a criminal case.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 1.051, Code of Criminal Procedure, is amended by amending Subsections (c), (f), and (i) and adding Subsections (a-1), (a-2), and (c-1) to read as follows:

(a-1) The attorney for the state in a criminal case may not:

(1) initiate or encourage an attempt to obtain from an unrepresented defendant a waiver of the right to counsel; or

(2) communicate with a defendant who has requested the appointment of counsel unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request.

(a-2) The court may not direct or encourage the defendant to communicate with the attorney for the state until the court advises the defendant of the right to counsel and the procedure for obtaining counsel and the defendant has been given a reasonable opportunity to obtain counsel. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney for the state unless the court or the court's designee authorized under Article 26.04 to appoint counsel for indigent defendants in the county has denied the request.

(c) An indigent defendant is entitled to have an attorney

1 appointed to represent him in any adversary judicial proceeding
 2 that may result in punishment by confinement and in any other
 3 criminal proceeding if the court concludes that the interests of
 4 justice require representation. Except as otherwise provided by
 5 this subsection, if an indigent defendant is entitled to and
 6 requests appointed counsel and if adversarial judicial proceedings
 7 have been initiated against the defendant, a court or the courts'
 8 designee authorized under Article 26.04 to appoint counsel for
 9 indigent defendants in the county shall appoint counsel as soon as
 10 possible, but not later than the end of the [~~third working day after~~
 11 ~~the date on which the court or the courts' designee receives the~~
 12 ~~defendant's request for appointment of counsel. In a county with a~~
 13 ~~population of 250,000 or more, the court or the courts' designee~~
 14 ~~shall appoint counsel as required by this subsection as soon as~~
 15 ~~possible, but not later than the end of the]~~ first working day after
 16 the date on which the court or the courts' designee receives the
 17 defendant's request for appointment of counsel.

18 (c-1) A court that is made aware of credible information
 19 indicating that a defendant suffers from mental illness or mental
 20 retardation to a degree that renders the defendant unable to
 21 rationally decide whether to request appointed counsel shall
 22 immediately appoint an attorney for the defendant.

23 (f) A defendant may voluntarily and intelligently waive in
 24 writing the right to counsel. A waiver obtained in violation of
 25 Subsection (a-1) or (a-2) is presumed invalid.

26 (i) Except as otherwise provided by this subsection, if an
 27 indigent defendant is entitled to and requests appointed counsel

1 and if adversarial judicial proceedings have not been initiated
 2 against the defendant, a court or the courts' designee authorized
 3 under Article 26.04 to appoint counsel for indigent defendants in
 4 the county shall appoint counsel immediately following the
 5 expiration of ~~[three working days after the date on which the court~~
 6 ~~or the courts' designee receives the defendant's request for~~
 7 ~~appointment of counsel. If adversarial judicial proceedings are~~
 8 ~~initiated against the defendant before the expiration of the three~~
 9 ~~working days, the court or the courts' designee shall appoint~~
 10 ~~counsel as provided by Subsection (c). In a county with a~~
 11 ~~population of 250,000 or more, the court or the courts' designee~~
 12 ~~shall appoint counsel as required by this subsection immediately~~
 13 ~~following the expiration of]~~ one working day after the date on which
 14 the court or the courts' designee receives the defendant's request
 15 for appointment of counsel. If adversarial judicial proceedings
 16 are initiated against the defendant before the expiration of the
 17 one working day, the court or the courts' designee shall appoint
 18 counsel as provided by Subsection (c).

19 SECTION 2. Article 17.02, Code of Criminal Procedure, is
 20 amended to read as follows:

21 Art. 17.02. DEFINITION OF "BAIL BOND"; CASH BOND
 22 AUTHORIZED. (a) A "bail bond" is a written undertaking entered
 23 into by the defendant and the defendant's ~~[his]~~ sureties for the
 24 appearance of the principal therein before some court or magistrate
 25 to answer a criminal accusation; provided, however, that the
 26 defendant upon execution of such bail bond may deposit with the
 27 custodian of funds of the court in which the prosecution is pending

current money of the United States in the amount of the bond, or in a lesser amount as provided by Article 17.025, in lieu of having sureties signing the same.

(b) Any cash funds deposited under this Article or Article 17.025 shall be receipted for by the officer receiving those funds. The officer shall deposit the funds in an interest-bearing account established for purposes of this subsection. Interest on the amount in the account may be retained by the county to cover the costs of administering this subsection. In addition, the county may impose a fee, not to exceed 10 percent of the amount deposited, to cover those administrative costs. The officer shall refund the amount deposited, less any amount retained under this subsection as an administrative fee, [the same and shall be refunded] to the defendant, or to another person to whom that amount is assigned by the defendant in a signed written instrument filed with that officer, [if and] when the defendant complies with the conditions of the defendant's [his] bond, and upon order of the court.

SECTION 3. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.025 to read as follows:

Art. 17.025. RELEASE ON BOND IN PARTIAL AMOUNT. (a) A magistrate may release a defendant on bail by permitting the defendant to deposit an amount of cash bond or to submit a bail bond in an amount that is less than the total amount of bail set in the case if the magistrate determines that requiring the defendant to deposit a cash bond or to procure a bail bond in the full amount of bail will impose an unreasonable hardship on the defendant.

(b) Only the court before whom the case is pending may

1 release a defendant under this article if the defendant is a
2 defendant described by Article 17.03(b).

3 (c) A magistrate who releases a defendant under this article
4 may impose any condition on the release that the magistrate could
5 impose if the defendant were released on personal bond.

6 SECTION 4. Article 17.03(b), Code of Criminal Procedure, is
7 amended to read as follows:

8 (b) Only the court before whom the case is pending may
9 release on personal bond a defendant who:

10 (1) is charged with an offense under the following
11 sections of the Penal Code:

12 (A) Section 19.02 (Murder);

13 (B) Section 19.03 (Capital Murder);

14 (C) Section 19.04 (Manslaughter);

15 (D) Section 19.05 (Criminally Negligent
16 Homicide);

17 (E) [(B)] Section 20.04 (Aggravated Kidnapping);

18 (F) [(C)] Section 22.021 (Aggravated Sexual
19 Assault) [+

20 [(D) Section 22.03 (Deadly Assault on Law
21 Enforcement or Corrections Officer, Member or Employee of Board of
22 Pardons and Paroles, or Court Participant)];

23 (G) [(E)] Section 22.04 (Injury to a Child,
24 Elderly Individual, or Disabled Individual);

25 (H) [(F)] Section 29.03 (Aggravated Robbery);

26 (I) [(G)] Section 30.02 (Burglary);

27 (J) Section 49.08 (Intoxication Manslaughter);

1 or

2 (K) [~~(H)~~] Section 71.02 (Engaging in Organized
3 Criminal Activity);

4 (2) is charged with a felony under Chapter 481, Health
5 and Safety Code, or Section 485.032 [~~485.033~~], Health and Safety
6 Code, punishable by imprisonment for a minimum term or by a maximum
7 fine that is more than a minimum term or maximum fine for a first
8 degree felony; or

9 (3) does not submit to testing for the presence of a
10 controlled substance in the defendant's body as requested by the
11 court or magistrate under Subsection (c) of this article or submits
12 to testing and the test shows evidence of the presence of a
13 controlled substance in the defendant's body.

14 SECTION 5. Article 26.04, Code of Criminal Procedure, is
15 amended by amending Subsections (a), (b), (e), (g), and (m) and
16 adding Subsections (m-1) and (m-2) to read as follows:

17 (a) The judges of the county courts, statutory county
18 courts, and district courts trying criminal cases in each county,
19 by local rule, shall adopt and publish written countywide
20 procedures for timely and fairly appointing counsel for an indigent
21 defendant in the county arrested for or charged with a misdemeanor
22 punishable by confinement or a felony. The procedures must be
23 consistent with this article and Articles 1.051, 15.17, 24.041,
24 26.05, and 26.052. A court shall appoint an attorney from a public
25 appointment list using a system of rotation, unless the court
26 appoints an attorney under Subsection (f), (h), or (i). The court
27 shall appoint attorneys from among the next five names on the

1 appointment list in the order in which the attorneys' names appear
2 on the list, unless the court makes a finding of good cause on the
3 record for appointing an attorney out of order. An attorney who is
4 not appointed in the order in which the attorney's name appears on
5 the list shall remain next in order on the list.

6 (b) Procedures adopted under Subsection (a) shall:

7 (1) authorize only the judges of the county courts,
8 statutory county courts, and district courts trying criminal cases
9 in the county, or the judges' designee, to appoint counsel for
10 indigent defendants in the county;

11 (2) apply to each appointment of counsel made by a
12 judge or the judges' designee in the county;

13 (3) ensure that each indigent defendant in the county
14 who is charged with a misdemeanor punishable by confinement or with
15 a felony and who appears in court without counsel has an opportunity
16 to confer with appointed counsel before the commencement of
17 judicial proceedings;

18 (4) require appointments for defendants in capital
19 cases in which the death penalty is sought to be made in compliance
20 ~~[comply]~~ with the requirements of ~~[under]~~ Article 26.052;

21 (5) ensure that each attorney appointed from a public
22 appointment list to represent an indigent defendant perform the
23 attorney's duty owed to the defendant in accordance with the
24 adopted procedures, the requirements of this code, and applicable
25 rules of ethics; ~~[and]~~

26 (6) ensure that appointments are allocated among
27 qualified attorneys in a manner that is fair, neutral, and

1 nondiscriminatory; and

2 (7) require appointments for defendants with severe
3 mental illness or mental retardation to be made in compliance with
4 the requirements of Article 26.041.

5 (e) In a county in which a court is required under
6 Subsection (a) to appoint an attorney from a public appointment
7 list:

8 (1) the judges of the county courts and statutory
9 county courts trying misdemeanor cases in the county, by formal
10 action:

11 (A) shall:

12 (i) establish a public appointment list of
13 attorneys qualified to provide representation in the county in
14 misdemeanor cases punishable by confinement; and

15 (ii) specify the objective qualifications
16 necessary for an attorney to be included on the list; and

17 (B) may establish, if determined by the judges to
18 be appropriate, more than one appointment list graduated according
19 to the degree of seriousness of the offense and the attorneys'
20 qualifications; and

21 (2) the judges of the district courts trying felony
22 cases in the county, by formal action:

23 (A) shall:

24 (i) establish a public appointment list of
25 attorneys qualified to provide representation in felony cases in
26 the county; and

27 (ii) specify the objective qualifications

1 necessary for an attorney to be included on the list, which must
2 include service as lead counsel for two or more jury trials; and

3 (B) may establish, if determined by the judges to
4 be appropriate, more than one appointment list graduated according
5 to the degree of seriousness of the offense and the attorneys'
6 qualifications.

7 (g) A countywide alternative program for appointing counsel
8 for indigent defendants in criminal cases is established by a
9 formal action in which two-thirds of the judges of the courts
10 designated under this subsection vote to establish the alternative
11 program. An alternative program for appointing counsel in
12 misdemeanor and felony cases may be established in the manner
13 provided by this subsection by the judges of the county courts,
14 statutory county courts, and district courts trying criminal cases
15 in the county. An alternative program for appointing counsel in
16 misdemeanor cases may be established in the manner provided by this
17 subsection by the judges of the county courts and statutory county
18 courts trying criminal cases in the county. An alternative program
19 for appointing counsel in felony cases may be established in the
20 manner provided by this subsection by the judges of the district
21 courts trying criminal cases in the county. In a county in which an
22 alternative program is established:

23 (1) the alternative program may:

24 (A) use a single method for appointing counsel or
25 a combination of methods; and

26 (B) use a multicounty appointment list using a
27 system of rotation; and

1 (2) the procedures adopted under Subsection (a) must
2 ensure that:

3 (A) attorneys appointed using the alternative
4 program to represent defendants in misdemeanor cases punishable by
5 confinement:

6 (i) meet specified objective
7 qualifications, which may be graduated according to the degree of
8 seriousness of the offense, for providing representation in
9 misdemeanor cases punishable by confinement; and

10 (ii) are approved by a majority of the
11 judges of the county courts and statutory county courts trying
12 misdemeanor cases in the county;

13 (B) attorneys appointed using the alternative
14 program to represent defendants in felony cases:

15 (i) meet specified objective
16 qualifications, which may be graduated according to the degree of
17 seriousness of the offense, for providing representation in felony
18 cases; and

19 (ii) are approved by a majority of the
20 judges of the district courts trying felony cases in the county;

21 (C) appointments for defendants in capital cases
22 in which the death penalty is sought comply with the requirements of
23 Article 26.052; ~~and~~

24 (D) appointments are reasonably and impartially
25 allocated among qualified attorneys;

26 (E) all misdemeanor courts within a county apply
27 the same indigent defense appointment system and the same rules for

1 appointment of counsel; and

2 (F) all felony courts within a county apply the
3 same indigent defense appointment system and the same rules for
4 appointment of counsel.

5 (m) In determining whether a defendant is indigent, the
6 court or the courts' designee shall ~~may~~ consider the defendant's
7 income, source of income, assets, property owned, outstanding
8 obligations, necessary expenses, the number and ages of dependents,
9 and spousal income that is available to the defendant; the
10 seriousness and complexity of each charged offense; the anticipated
11 cost of representation; and any other factor impacting the ability
12 of the defendant to retain private counsel. The court or the
13 courts' designee may not consider whether the defendant has posted
14 or is capable of posting bail, except to the extent that it reflects
15 the defendant's financial circumstances as measured by the
16 considerations listed in this subsection.

17 (m-1) A defendant is presumed to be indigent if:

18 (1) the defendant or a dependent of the defendant has
19 been determined to be eligible to receive public assistance,
20 including food stamps, Medicaid, Temporary Assistance to Needy
21 Families, Supplemental Security Income, public or subsidized
22 housing, or civil legal services;

23 (2) the household income of the defendant is equal to
24 or less than 150 percent of the poverty guidelines published
25 annually by the United States Department of Commerce;

26 (3) the defendant is currently:

27 (A) serving a sentence in a correctional

1 institution;

2 (B) residing in a public mental health facility;

3 or

4 (C) the subject of a proceeding in which
5 admission or commitment to a public mental health facility is
6 sought; or

7 (4) the defendant has been previously determined to be
8 indigent and entitled to court-appointed counsel in the currently
9 pending or a related court proceeding.

10 (m-2) Notwithstanding Subsections (m) and (m-1), a
11 defendant is eligible for appointment of counsel if the defendant
12 is unable to employ counsel without substantial financial hardship
13 to the defendant or the defendant's dependents.

14 SECTION 6. Chapter 26, Code of Criminal Procedure, is
15 amended by adding Articles 26.041, 26.042, and 26.043 to read as
16 follows:

17 Art. 26.041. APPOINTMENT OF COUNSEL FOR DEFENDANT WITH
18 SEVERE MENTAL ILLNESS OR MENTAL RETARDATION. In addition to
19 meeting the requirements of Article 26.04, an attorney appointed as
20 counsel for a defendant who suffers from severe mental illness or
21 mental retardation must:

22 (1) have experience representing criminal defendants
23 with mental illness or mental retardation; or

24 (2) have participated in legal education courses or
25 other training related to criminal defense of mentally ill or
26 mentally retarded defendants.

27 Art. 26.042. OFFICE FOR PRE-TRIAL SERVICES. (a) In this

1 article, "office for pre-trial services" means an office that
2 collects information about defendants and presents the information
3 to a court for use in bail and indigent defense proceedings.

4 (b) The commissioners court of a county may provide for the
5 pre-trial collection of information about defendants by:

6 (1) creating an office for pre-trial services for the
7 county;

8 (2) collaborating with the commissioners court in a
9 neighboring county or counties to create an office for pre-trial
10 services for the region; or

11 (3) contracting with a nonprofit entity.

12 (c) An office for pre-trial services may:

13 (1) investigate and verify facts about a defendant
14 that are relevant to releasing the defendant on bail or appointing
15 counsel for the defendant;

16 (2) prepare and present to the court a pre-trial
17 release recommendation describing the facts collected during the
18 investigation; and

19 (3) assist the court in securing the attendance in
20 court of a defendant released on personal or cash bond.

21 (d) A person convicted of an offense shall pay, in addition
22 to all other costs, a fee of no more than \$20 to be determined by the
23 commissioners court or court in the county or counties in which the
24 office for pre-trial services is located.

25 (e) An office for pre-trial services may not deny services
26 to any person because the person is unable to pay for the services
27 as required by Subsection (d).

1 Sec. 26.043. RIGHT OF ACTION. (a) An aggrieved person may
2 file an action to secure compliance with a plan adopted by a county
3 under Article 26.04(a) if:

4 (1) the person has provided written notice describing
5 the alleged violation to county and judicial officials;

6 (2) the allegation describes a systemic or continual
7 violation of a plan that applies generally and has occurred without
8 doubt in a specific case; and

9 (3) the county and judicial officials fail to
10 substantially correct the violation in pending and future cases not
11 later than 30 days after receiving the notice by:

12 (A) amending the plan to conform to actual
13 practice; or

14 (B) conforming actual practice to the plan.

15 (b) A defendant in an action brought under this article may
16 bring into the action by joining as a defendant:

17 (1) any official or organization that votes in favor
18 of approving the plan; or

19 (2) any county that receives funds under Section
20 71.062, Government Code, to implement the plan.

21 (c) A person who prevails in an action brought under this
22 article may recover only declaratory relief, injunctive relief,
23 attorney's fees, and court costs.

24 (d) Venue for an action brought under this article is in a
25 district court in Travis County.

26 SECTION 7. Article 26.05, Code of Criminal Procedure, is
27 amended by amending Subsections (a), (c), and (h) and adding

Subsection (h-1) to read as follows:

(a) A counsel, other than an attorney with a public defender, appointed to represent a defendant in a criminal proceeding, including a habeas corpus hearing, shall be paid a reasonable attorney's fee for performing the following services, based on the time and labor required, the complexity of the case, and the experience and ability of the appointed counsel:

(1) time spent in court making an appearance on behalf of the defendant as evidenced by a docket entry, time spent in trial, and time spent in a proceeding in which sworn oral testimony is elicited;

(2) reasonable and necessary time spent out of court on the case, supported by any documentation that the court requires;

(3) preparation of an appellate brief and preparation and presentation of oral argument to a court of appeals or the Court of Criminal Appeals; and

(4) preparation of a motion for rehearing or a petition for discretionary review.

(c) Each fee schedule adopted shall state reasonable fixed rates or minimum and maximum hourly rates, taking into consideration reasonable and necessary overhead costs and the availability of qualified attorneys willing to accept the stated rates, and shall provide a form for the appointed counsel to itemize the types of services performed. No payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings and the judge

1 approves the payment. If the judge disapproves the requested
2 amount of payment, the judge shall make written findings stating
3 the amount of payment that the judge approves and each reason for
4 approving an amount different from the requested amount. An
5 attorney whose request for payment is wholly or partly disapproved
6 may appeal the disapproval by filing a motion with the presiding
7 judge of the administrative judicial region. On the filing of a
8 motion, the presiding judge of the administrative judicial region
9 shall review the disapproval of payment and determine the
10 appropriate amount of payment. In reviewing the disapproval, the
11 presiding judge of the administrative judicial region may conduct a
12 hearing. If the presiding judge of the administrative judicial
13 region disapproves the requested amount of payment, the presiding
14 judge shall make written findings stating the amount of payment
15 that the presiding judge approves and each reason for approving an
16 amount different from the requested amount. Not later than the 45th
17 day after the date an application for payment of a fee is submitted
18 under this article, the commissioners court shall pay to the
19 appointed counsel the amount that is approved by the presiding
20 judge of the administrative judicial region and that is reasonable
21 and necessary for the service performed by the attorney or in
22 accordance with the fee schedule for that county.

23 (h) Reimbursement of expenses incurred for purposes of
24 investigation or expert testimony may be paid, in the manner
25 designated by appointed counsel and approved by the court, directly
26 to:

27 (1) a private investigator licensed under Chapter

1702, Occupations Code;

(2) a mitigation specialist; or

(3) [, or to] an expert witness ~~[in the manner designated by appointed counsel and approved by the court]~~.

(h-1) If the judge disapproves the requested amount of direct payment to a person under Subsection (h), the judge shall make written findings stating the amount of payment that the judge approves and each reason for approving an amount different from the requested amount. A person whose request for payment is wholly or partly disapproved may appeal the decision in the manner provided for an attorney under Subsection (c).

SECTION 8. Article 26.052, Code of Criminal Procedure, is amended by amending Subsections (d), (e), (f), and (l) and adding Subsections (e-1) and (e-2) to read as follows:

(d)(1) The committee shall adopt standards for the qualification of attorneys to be appointed to represent indigent defendants in capital cases in which the death penalty is sought.

(2) The standards must require that an attorney appointed to a death penalty case:

(A) be a member of the State Bar of Texas;

(B) exhibit, through the use of case examples provided to the committee, proficiency and commitment to providing quality representation to defendants in death penalty cases;

(C) have at least five years of experience in criminal litigation;

(D) have tried to a verdict as lead defense counsel 10 or more ~~[a significant number of]~~ felony cases,

1 including homicide trials and other trials for offenses punishable
2 as second or first degree felonies or capital felonies;

3 (E) have trial experience, demonstrated to the
4 committee in the form of case examples, in:

5 (i) the use of and challenges to mental
6 health or forensic expert witnesses; and

7 (ii) investigating and presenting
8 mitigating evidence at the penalty phase of a death penalty trial;
9 and

10 (F) have participated in 32 hours or more of
11 continuing legal education courses [~~or other training~~] relating to
12 criminal defense in death penalty cases at programs approved by the
13 Texas Task Force on Indigent Defense or a statewide professional
14 association of criminal defense attorneys that is authorized to
15 receive grants under Section 56.003(f), Government Code, and whose
16 members regularly represent indigent defendants in criminal
17 matters.

18 (3) The committee shall prominently post the standards
19 in each district clerk's office in the region with a list of
20 attorneys qualified for appointment.

21 (4) The committee shall make available on request any
22 application submitted by an attorney for placement on the list of
23 qualified attorneys. The committee may omit identifying
24 information or information found to be confidential before
25 disclosing the application to the public.

26 (5) Not later than the second anniversary of the date
27 an attorney is placed on the list of attorneys qualified for

1 appointment in death penalty cases and each year following the
 2 second anniversary, the attorney must present proof to the
 3 committee that the attorney has successfully completed the minimum
 4 continuing legal education requirements of the State Bar of Texas,
 5 including a course or other form of training relating to the defense
 6 of death penalty cases. The committee shall remove the attorney's
 7 name from the list of qualified attorneys if the attorney fails to
 8 provide the committee with proof of completion of the continuing
 9 legal education requirements.

10 (6) The committee shall monitor the performance of
 11 each attorney who represents indigent defendants. In determining
 12 whether an attorney shall remain on the list of qualified
 13 attorneys, the committee shall consider:

- 14 (A) the caseload carried by the attorney;
- 15 (B) the depth of investigation conducted by the
 16 attorney related to issues of guilt or degree of penalty;
- 17 (C) the professional judgment demonstrated by
 18 the attorney in asserting legal claims;
- 19 (D) the knowledge and experience of the attorney
 20 in selecting jurors; and
- 21 (E) the post-verdict performance of the
 22 attorney, including providing assistance to succeeding counsel,
 23 maintaining records, and cooperating with legal strategies on
 24 appeal.

25 (e) The presiding judge of the district court in which a
 26 capital felony case is filed shall appoint two attorneys who are
 27 ~~at least one of whom must be~~ qualified under this chapter~~[7]~~ to

1 represent an indigent defendant as soon as practicable after
2 charges are filed, unless the state gives notice in writing that the
3 state will not seek the death penalty.

4 (e-1) The presiding judge shall consider the caseload of an
5 eligible attorney before assigning a capital felony case to the
6 attorney in order to ensure adequate representation.

7 (e-2) Not later than 10 days after the date the attorney is
8 appointed, the presiding judge of the district court shall report
9 the capital felony case name and number and the names of the
10 appointed attorneys to the Texas Task Force on Indigent Defense.

11 (f) Appointed counsel may file with the trial court a
12 pretrial ex parte confidential request for advance payment of
13 expenses, including expenses for a mitigation specialist or other
14 expert, to investigate potential defenses. The request for
15 expenses must state:

16 (1) the type of investigation to be conducted or
17 expert to be retained;

18 (2) specific facts that suggest the expert or
19 investigation will produce ~~[result in]~~ admissible evidence; and

20 (3) an itemized list of anticipated expenses for each
21 expert or investigation.

22 (1) An attorney appointed under this article to represent a
23 defendant at trial or on direct appeal is compensated as provided by
24 Article 26.05 from county funds. Advance payment of expenses
25 anticipated or reimbursement of expenses incurred for purposes of
26 investigation or expert testimony may be paid directly to a private
27 investigator licensed under Chapter 1702, Occupations Code, a

1 mitigation specialist, or ~~[to]~~ an expert witness in the manner
2 designated by appointed counsel and approved by the court.

3 SECTION 9. Article 39.14, Code of Criminal Procedure, is
4 amended by adding Subsection (c) to read as follows:

5 (c) On motion of the defendant and on notice to the other
6 parties, the court in which a prosecution for capital murder is
7 pending shall order the state to disclose to the attorney
8 representing the defendant a photocopy of each law enforcement
9 report, report by a medical examiner, report by any expert witness,
10 or transcript of a statement by a witness, whether written or
11 recorded on audiotape or videotape, not later than the 15th day
12 before the date the trial begins. On a showing of necessity for the
13 victim's safety, the court may keep the address and telephone
14 number of a victim of the offense confidential.

15 SECTION 10. Subchapter A, Chapter 102, Code of Criminal
16 Procedure, is amended by adding Article 102.0186 to read as
17 follows:

18 Art. 102.0186. ADDITIONAL COSTS ATTENDANT TO INTOXICATION
19 CONVICTIONS: FAIR DEFENSE. (a) In addition to the costs imposed
20 by Articles 102.016, 102.018, and 102.0185, a person convicted of
21 an offense under Chapter 49, Penal Code, shall pay \$100 on
22 conviction of the offense.

23 (b) Costs imposed under this article are imposed without
24 regard to whether the defendant is placed on community supervision
25 after being convicted of the offense or receives deferred
26 disposition or deferred adjudication for the offense. The court
27 shall assess and make a reasonable effort to collect the cost due

1 under this article whether or not any other court cost is assessed
2 or collected.

3 (c) Court costs under this article are collected in the same
4 manner as other fines or costs collected under Section 133.102(e),
5 Local Government Code.

6 (d) An officer collecting the costs shall keep separate
7 records of the funds collected under this article and shall deposit
8 the funds in the county or municipal treasury, as appropriate.

9 (e) The custodian of a county or municipal treasury shall:

10 (1) keep records of the amount of funds on deposit
11 collected under this article; and

12 (2) send to the comptroller before the last day of the
13 first month following each calendar quarter the funds collected
14 under this article during the preceding quarter.

15 (f) The comptroller shall deposit the funds received under
16 this article to the credit of the account established under Section
17 71.058, Government Code.

18 SECTION 11. Subchapter D, Chapter 71, Government Code, is
19 amended by adding Section 71.0605 to read as follows:

20 Sec. 71.0605. LIST OF CAPITAL CASES PENDING. The Task Force
21 on Indigent Defense shall maintain a list of pending capital murder
22 cases in which the state is seeking the death penalty and shall make
23 the list available to the public.

24 SECTION 12. The heading to Section 71.061, Government Code,
25 is amended to read as follows:

26 Sec. 71.061. MONITORING COUNTY COMPLIANCE [~~REPORTING~~
27 ~~PLAN~~]; TASK FORCE REPORTS.

SECTION 13. Section 71.061, Government Code, is amended by adding Subsections (a-1) and (b-1) to read as follows:

(a-1) The Task Force on Indigent Defense shall hire and train a full-time staff to monitor the implementation of the procedures adopted by a county under Article 26.04(a), Code of Criminal Procedure. The staff shall monitor the implementation of the procedures adopted under Article 26.04(a), Code of Criminal Procedure, in accordance with a formal schedule of monitoring developed by the Task Force on Indigent Defense.

(b-1) The Task Force on Indigent Defense shall annually submit to the legislature a report on the implementation by the counties of the procedures adopted under Article 26.04(a), Code of Criminal Procedure.

SECTION 14. Section 71.062, Government Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (e) to read as follows:

(a) The Task Force on Indigent Defense shall:

(1) provide technical support to:

(A) assist counties in improving their indigent defense systems; ~~and~~

(B) promote compliance by counties with the requirements of state law relating to indigent defense; and

(C) assist a county commissioner or judge to study ways in which an office of the public defender may improve the quality, cost, efficiency, or independence of indigent defense services funded by the county;

(2) direct the comptroller to distribute funds,

including grants, to counties to provide indigent defense services in the county; and

(3) monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant, including enforcement by directing the comptroller to:

(A) withdraw grant funds; or

(B) require reimbursement of grant funds by the county.

(a-1) A county may not receive a grant from the Task Force on Indigent Defense unless the official applying for the grant is able to certify, on reasonable inquiry, that the procedures adopted under Article 26.04(a), Code of Criminal Procedure, are substantially implemented as of the date the certification is sought.

(e) A judicial official, auditor, or clerk shall provide to a county judge or commissioner any information sought in conjunction with a study conducted under Subsection (a)(1)(C).

SECTION 15. Section 102.021, Government Code, is amended to read as follows:

Sec. 102.021. COURT COSTS ON CONVICTION. A person convicted of an offense shall pay, in addition to all other costs:

(1) court costs on conviction of a felony (Sec. 133.102, Local Government Code) . . . \$133;

(2) court costs on conviction of a Class A or Class B misdemeanor (Sec. 133.102, Local Government Code) . . . \$83;

(3) court costs on conviction of a nonjailable misdemeanor offense, including a criminal violation of a municipal

1 ordinance, other than a conviction of an offense relating to a
2 pedestrian or the parking of a motor vehicle (Sec. 133.102, Local
3 Government Code) . . . \$40;

4 (4) court costs on certain convictions in statutory
5 county courts (Sec. 51.702, Government Code) . . . \$15;

6 (5) court costs on certain convictions in certain
7 county courts (Sec. 51.703, Government Code) . . . \$15;

8 (6) a time payment fee if convicted of a felony or
9 misdemeanor for paying any part of a fine, court costs, or
10 restitution on or after the 31st day after the date on which a
11 judgment is entered assessing the fine, court costs, or restitution
12 (Sec. 133.103, Local Government Code) . . . \$25;

13 (7) a fee for services of prosecutor (Art. 102.008,
14 Code of Criminal Procedure) . . . \$25;

15 (8) fees for services of peace officer:

16 (A) issuing a written notice to appear in court
17 for certain violations (Art. 102.011, Code of Criminal Procedure)
18 . . . \$5;

19 (B) executing or processing an issued arrest
20 warrant or capias (Art. 102.011, Code of Criminal Procedure) . . .
21 \$50;

22 (C) summoning a witness (Art. 102.011, Code of
23 Criminal Procedure) . . . \$5;

24 (D) serving a writ not otherwise listed (Art.
25 102.011, Code of Criminal Procedure) . . . \$35;

26 (E) taking and approving a bond and, if
27 necessary, returning the bond to courthouse (Art. 102.011, Code of

1 Criminal Procedure) . . . \$10;

2 (F) commitment or release (Art. 102.011, Code of
3 Criminal Procedure) . . . \$5;

4 (G) summoning a jury (Art. 102.011, Code of
5 Criminal Procedure) . . . \$5;

6 (H) attendance of a prisoner in habeas corpus
7 case if prisoner has been remanded to custody or held to bail (Art.
8 102.011, Code of Criminal Procedure) . . . \$8 each day;

9 (I) mileage for certain services performed (Art.
10 102.011, Code of Criminal Procedure) . . . \$0.29 per mile; and

11 (J) services of a sheriff or constable who serves
12 process and attends examining trial in certain cases (Art. 102.011,
13 Code of Criminal Procedure) . . . not to exceed \$5;

14 (9) services of a peace officer in conveying a witness
15 outside the county (Art. 102.011, Code of Criminal Procedure) . . .
16 \$10 per day or part of a day, plus actual necessary travel expenses;

17 (10) overtime of peace officer for time spent
18 testifying in the trial or traveling to or from testifying in the
19 trial (Art. 102.011, Code of Criminal Procedure) . . . actual cost;

20 (11) court costs on an offense relating to rules of the
21 road, when offense occurs within a school crossing zone (Art.
22 102.014, Code of Criminal Procedure) . . . \$25;

23 (12) court costs on an offense of passing a school bus
24 (Art. 102.014, Code of Criminal Procedure) . . . \$25;

25 (13) court costs on an offense of truancy or
26 contributing to truancy (Art. 102.014, Code of Criminal Procedure)
27 . . . \$20;

1 (14) cost for visual recording of intoxication arrest
2 before conviction (Art. 102.018, Code of Criminal Procedure) . . .
3 \$15;

4 (15) cost of certain evaluations (Art. 102.018, Code
5 of Criminal Procedure) . . . actual cost;

6 (16) additional costs attendant to certain
7 intoxication convictions under Chapter 49, Penal Code, for
8 emergency medical services, trauma facilities, and trauma care
9 systems (Art. 102.0185, Code of Criminal Procedure) . . . \$100;

10 (17) cost for DNA testing for certain felonies (Art.
11 102.020, Code of Criminal Procedure) . . . \$250;

12 (18) court cost on an offense of public lewdness or
13 indecent exposure (Art. 102.020, Code of Criminal Procedure) . . .
14 \$50;

15 (19) court cost on conviction of a misdemeanor under
16 Subtitle C, Title 7, Transportation Code (Sec. 542.403,
17 Transportation Code) . . . \$3;

18 (20) cost for impoundment of vehicle (Sec. 601.263,
19 Transportation Code) . . . \$15 per day; ~~and~~

20 (21) a civil and criminal enforcement cost on
21 conviction of an offense of, or related to, the nonpayment of a toll
22 in certain counties (Sec. 284.2031, Transportation Code) . . . \$1;

23 (22) fee for services of a pre-trial services office
24 (Art. 26.042, Code of Criminal Procedure) . . . not more than \$20;
25 and

26 (23) additional costs attendant to convictions under
27 Chapter 49, Penal Code, to help fund the Fair Defense Account (Art.

102.0186, Code of Criminal Procedure) . . . \$100.

SECTION 16. Section 133.102(e), Local Government Code, is amended to read as follows:

(e) The comptroller shall allocate the court costs received under this section to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the accounts and funds had been collected and reported separately, except that the account or fund may not receive less than the following percentages:

- (1) abused children's counseling 0.0088 percent;
- (2) crime stoppers assistance 0.2581 percent;
- (3) breath alcohol testing 0.5507 percent;
- (4) Bill Blackwood Law Enforcement Management Institute 1.8000 [~~2.1683~~] percent;
- (5) law enforcement officers standards and education 5.0034 percent;
- (6) comprehensive rehabilitation 5.3218 percent;
- (7) operator's and chauffeur's license 10.0263 [~~11.1426~~] percent;
- (8) criminal justice planning 10.0263 [~~12.5537~~] percent;
- (9) an account in the state treasury to be used only for the establishment and operation of the Center for the Study and Prevention of Juvenile Crime and Delinquency at Prairie View A&M University 1.2090 percent;
- (10) compensation to victims of crime fund 37.6338

1 percent;

2 (11) fugitive apprehension account 12.0904 percent;

3 (12) judicial and court personnel training fund 4.8362
4 percent;

5 (13) an account in the state treasury to be used for
6 the establishment and operation of the Correctional Management
7 Institute of Texas and Criminal Justice Center Account 1.2090
8 percent; and

9 (14) fair defense account 10.0263 [~~6.0143~~] percent.

10 SECTION 17. Article 1.051(j), Code of Criminal Procedure,
11 is repealed.

12 SECTION 18. The fees imposed under Articles 26.042 and
13 102.0186, Code of Criminal Procedure, as added by this Act, apply
14 only on conviction for an offense committed on or after the
15 effective date of this Act. A conviction for an offense committed
16 before the effective date of this Act is governed by the law in
17 effect at the time the offense was committed, and the former law is
18 continued in effect for that purpose. For purposes of this section,
19 an offense was committed before the effective date of this Act if
20 any element of the offense was committed before that date.

21 SECTION 19. This Act takes effect September 1, 2005.